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TEO CHEE KONG v. PP

COURT OF APPEAL, PUTRAJAYA
MOHAMAD ZABIDIN MOHD DIAH JCA
RAVINTHRAN PARAMAGURU JCA
LEE HENG CHEONG JCA
B [CRIMINAL APPEAL NO: S-06A-13-04-2018]
10 MAY 2021

CRIMINAL PROCEDURE: *Charge – Prosecution – Public Prosecutor ('PP') – Prosecutorial discretion – Appeal against – Appellant charged under s. 4(1)(a) and*
C *(b) of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 after forfeiture proceedings instituted – Whether prosecutorial discretion of PP exercised in bad faith – Representation by Deputy Public Prosecutor that appellant would not be prosecuted induced appellant to disclose information – Whether doctrine of estoppel operated against PP – Whether*
D *appellant afforded protection under s. 30(7) of Malaysian Anti-Corruption Commission Act 2009 – Whether prosecutorial discretion could be challenged in court*

The appellant, former Deputy Director of Sabah Water Department, together with several others, was arrested by the Malaysian Anti-Corruption
E Commission ('MACC'). He was first instituted with four civil proceedings by the Public Prosecutor ('PP'), namely: (i) two forfeiture proceedings and one prohibitory proceeding in the High Court; and (ii) one forfeiture proceeding in the Sessions Court ('forfeiture proceedings') before being charged in the Sessions Court. After being served with a notice under
F s. 32(2)(a) and (b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('Act') and being informed that he would be proffered with 146 charges under the Act, the appellant went to the MACC office. There, relying on the representation made by the Deputy Public Prosecutor ('DPP') that no prosecution would be instituted against him ('representation'), the appellant proceeded to disclose the
G information in his affidavit opposing the forfeiture proceedings. However, the appellant was later brought to the Sessions Court and charged with 146 charges. The appellant sought the order that the respondent's conduct to first institute the forfeiture proceedings and after receiving its judgments in the High Court thereafter proceeded to proffer the 146 charges in the Sessions
H Court on the same date ('conduct of PP') tantamount to a multiplicity of criminal proceedings, was *mala fide*, oppressive and an abuse of court process. Therefore, the said 146 charges ought to be dismissed and/or quashed under the inherent power and/or general supervisory jurisdiction of the High Court. The High Court dismissed the application. Hence, the
I present appeal. In support of the appeal, the appellant submitted, *inter alia*, that: (i) considering that he was induced by the representation, by virtue of s. 115 of the Evidence Act 1950, a legitimate expectation had arisen, thus estopping the PP from filing the 146 charges; and (ii) since s. 30(7) of the

Malaysian Anti-Corruption Commission Act 2009 ('MACCA') was still not repealed at the time the appellant gave his statement in the MACC office, the protection prescribed under the said section ought to be afforded to him. Therefore, the issues in this appeal were: (i) whether the conduct of the PP was made in pursuance of bad faith; (ii) whether the PP was estopped from instituting the 146 charges against the appellant; and (iii) whether the protection under s. 30(7) of the MACCA ought to be afforded to the appellant, thus making it trite for the 146 charges in the Sessions Court to be quashed.

Held (dismissing appeal)

Per Mohamad Zabidin Mohd Diah JCA delivering the judgment of the court:

(1) The conduct of the PP did not amount to bad faith. The forfeiture proceedings were made under s. 56 of the Act, against properties, whereas, all the 146 charges were made in pursuance of s. 4(1) of the Act, a prosecution against an individual and not properties. Nowhere in the Act or the MACCA prohibits an action of forfeiture of property be taken before any charge was made under s. 4(1) of the Act or for any offence under the MACCA. The application under s. 56(1) of the Act did not prohibit the PP from exercising its prosecutorial power against an individual. Therefore, there was no evidence to support the allegation that the PP was motivated by bad faith in deciding to institute the 146 charges against the appellant. (paras 23-25)

(2) Estoppel based on ground of *res judicata* could not apply towards the PP because (i) the forfeiture of properties and prosecution of the appellant were two separate proceedings and not a repetition of process; and (ii) the forfeiture proceedings were conducted at the High Court while the prosecution of the appellant was made at the Sessions Court. Hence, the application between the respective courts differed in their mode of litigations and standard burden of proof. The appellant did have a legitimate expectation, but, it was only confined to legitimate expectation to have a right to procedural fairness. In other words, the appellant had a legitimate expectation that the PP would act fairly towards him procedurally. However, there was no suggestion nor evidence to show that the PP had not followed the correct procedure in framing the 146 charges against the appellant. It followed that the issue of legitimate expectation and estoppel raised by the appellant was devoid of merit. (paras 29 & 32)

(3) Section 30(7) of the MACCA does not, in any way, give immunity to any person disclosing information to the prosecution for any offence he might have committed. It merely provides that no prosecution (except for giving false or inconsistent statement) shall be brought on account of

A disclosing information to an investigating officer. As such, the issue that the appellant should be afforded the protection under s. 30(7) of the MACCA was also without merit. (paras 35 & 36)

Case(s) referred to:

Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 FC ***(refd)***

B *Arab Malaysian Finance Bhd v. Kah Motor Co Sdn Bhd [2010] 1 LNS 359 CA* ***(refd)***

Azmi Osman v. PP & Another Appeal [2015] 9 CLJ 845 CA ***(refd)***

Government Of The State Of Sabah v. Suwiri Sdn Bhd [2005] 4 CLJ 727 CA ***(refd)***

Johnson Tan Han Seng v. PP & Other Appeals [1977] 1 LNS 38 FC ***(refd)***

Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***

Law Society of Singapore v. Tan Guat Neo Phyllis [2008] 2 SLR 239 ***(refd)***

C *Long Samat & Ors v. PP [1974] 1 LNS 80 FC* ***(refd)***

Teh Cheng Poh v. PP [1978] 1 LNS 202 PC ***(refd)***

V Veeriah v. General Manager, Keretapi Tanah Melayu [1972] 1 LNS 160 HC ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful

D Activities Act 2001, ss. 4(1)(a), (b), 53, 56(1)

Criminal Procedure Code, s. 376(1)

Evidence Act 1950, s. 115

Federal Constitution, art. 145(3)

Malaysian Anti-Corruption Commission Act 2009, s. 30(7)

E *For the appellant - Roland Cheng, Ram Singh, Kimberly Ye Wan Chuin & Michele Yee; M/s Roland Cheng & Co*

For the respondent - Allan Suman Pillai & Mohd Sophian Zakaria; DPPs

[Editor's note: Appeal from High Court, Kota Kinabalu; Criminal Application No: BKI-44-1-2-2018 (affirmed).]

F *Reported by Syamim Ariffin*

JUDGMENT

Mohamad Zabidin Mohd Diah JCA:

Introduction

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[1] This is an appeal against the decision of the learned High Court Judge which was delivered on 26 March 2018 in dismissing the appellant's notice of motion dated 6 February 2018 to quash all the 146 charges which are pending against the appellant in the Sessions Court.

H **[2]** The order the appellant was seeking in the notice of motion ("NOM") before the learned High Court Judge was that:

(i) the conduct of the Public Prosecutor by initiating two forfeiture proceedings, one prohibitory proceeding in High Court and one forfeiture proceeding in the Sessions Court and after obtaining judgments

I in the High Court on 13 December 2017 had subsequently thereafter on

13 December 2017 instituted 146 charges against the applicant/accused in the Sessions Court (hereinafter referred to as "said 146 charged") amount to multiplicity of criminal proceedings, is *mala fide*, oppressive and an abuse of the process of the court;

(ii) if the answer to issue abovementioned is in the affirmative, then the said 146 charges in the Sessions Court should be dismissed and/or quashed under the inherent power and/or general supervisory jurisdiction of the High Court;

(iii) if the answer to issue above mentioned is in the negative, all affidavits evidence adduced by the applicant/accused in the two forfeiture proceedings, one (prohibitory proceeding in the High Court and one forfeiture proceeding in the Sessions Court should be excluded from the trial of the said 146 charges in Sessions Court Criminal Cases No. BKI-61R-1-12-2017 and BKI-61R-59-12-2017.

[3] On 26 March 2018, the learned High Court Judge dismissed the appellant's NOM and ordered the trial in the Sessions Court to proceed expeditiously. Hence this appeal before us which we dismissed for the following reasons.

Brief Facts

[4] On 4 October 2016, the appellant who was the former Deputy Director of the Sabah Water Department ("JANS") together with Awang Mohd Tahir Mohd Talib and Lim Lam Beng @ Lim Chee Hong were arrested by the Malaysian Anti-Corruption Commission ("MACC"). Fauziah Ag Piut who was Awang Mohd Tahir's wife, was also arrested on the same day.

[5] On 29 December 2016, Awang Mohd Tahir Mohd Talib the former Director of JANS, was charged with 12 charges under s. 4(1)(a) and 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("the Act"), involving RM45 million. His wife Fauziah Ag Piut was charged with 19 charges under s. 4(1)(b) of the same Act. The couple was also jointly charged with two charges under s. 4(1)(b) of the Act.

[6] Lim Lam Beng, the former Deputy Director of JANS was also charged on the same day with four charges under s. 4(1)(b) of the Act. However, no charge was preferred against the appellant on that date. Instead, the following civil proceedings were filed against the appellant:

(i) notice of motion dated 7 August 2017 in Criminal Application No. BKI-44(A)-30-8-2017 against the appellant's 65 landed properties in Sabah ("FOP land") under s. 56 of the Act;

A (ii) notice of motion dated 11 July 2017 in Criminal Application No. BKI-44(A)-16-7-2017 against the appellant's monies in 67 bank accounts and the appellant's son, Joseph Teo Kok Wei's monies in four bank accounts ("FOP bank") under s. 56 of the Act;

B (iii) notice of motion dated 27 July 2017 in Criminal Application No. BKI-44(A)-29-7-2017 to prohibit the appellant from dealing with his properties in Singapore ("PP Singapore") under s. 53 of the Act; and

C (iv) notice of motion dated 13 July 2017 in the Sessions Court in Criminal Application No. BKI-64-4-7-2017 against the appellant's cash monies in Malaysian and foreign currencies ("FOP cash") under s. 41 of the Malaysian Anti-Corruption Commission Act 2009. ("MACC Act 2009")

[7] On 13 December 2017, the learned High Court Judge allowed the FOP land, FOP bank and PP Singapore (collectively referred to as "the said
D decision of FOP in HC"). With regard to the FOP cash, the learned Sessions Court Judge dismissed it on 30 January 2018.

[8] On 12 December 2017, after being served with notice pursuant to s. 32(2)(a) and (b) of the Act, the appellant went to MACC office when he was informed that he would be charged with 146 charges on the next day (13
E December 2017).

[9] On 13 December 2017, the appellant was brought to the Sessions Court Kota Kinabalu and charged with 78 charges for offences under s. 4(1)(a) and 68 charges (total 146 charges) for offences under s. 4(1)(b) of the Act.

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[10] The appellant claimed trial to all 146 charges and on 6 February 2018 the appellant filed this NOM to have all 146 charges against him which were pending trial in the Sessions Court be dismissed or quashed under the inherent power and/or general supervisory jurisdiction of the High Court.

G **[11]** On 20 March 2018, the learned High Court Judge dismissed the said NOM. Hence, this appeal before us.

Appeal

[12] The appellant listed 11 grounds of appeal in his amended petition of
H appeal. However, during the hearing of this appeal, learned counsel for the appellant summarised the 11 grounds into four main grounds which are as follows:

(i) the learned High Court Judge was wrong to have found that the Public Prosecutor's ("PP") power cannot be challenged in court;

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(ii) the learned High Court Judge erred in law when she failed to consider that the setting aside NOM was based on High Court's common law inherent jurisdiction and the said Constitutional NOM for Federal Court are different in nature;

(iii) the respondent's conduct is *mala fide*, is oppressive and is an abuse of criminal process; and

(iv) the learned High Court Judge failed to consider the respondent's conduct had breached the doctrine of estoppel.

[13] The gist of the submission before us by learned counsel for the appellant is that the learned High Court Judge had erred when Her Ladyship ruled that the PP's power cannot be challenged in court. According to learned counsel, the PP's prosecutorial power can be challenged in court as the PP and his deputies do not enjoy absolute prosecutorial immunity. In appropriate cases, where the exercise of the prosecutorial power is unconstitutional, or done *mala fide*, or when the power is abused, the court can intervene and redress that wrong. Learned counsel for the appellant referred us to a string of authorities and amongst them are *Teh Cheng Poh v. PP* [1978] 1 LNS 202; [1979] 1 MLJ 50 where Lord Diplock in giving the advice of the Privy Council had alluded to the fact that the exercise of prosecutorial discretion can be questioned when it had been exercised unlawfully or based on irrelevant consideration. If the PP as the custodian of prosecutorial power exercises his prosecutorial discretion for other than its constitutional purpose or exercises it based on some irrelevant consideration or exercises his discretion unlawfully or the prosecutorial power is abused for some improper purpose, then that decision can become justiciable and the courts have a duty to render assistance to an individual who has been aggrieved by that decision. The High Court is clothed with common law power to hear and grant an order to set aside/quash criminal charges. Learned counsel referred us to Federal Court case of *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289; [2014] 6 MLJ 831 and *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544. Thus, according to learned counsel, the learned High Court Judge was wrong when Her Ladyship held that the PP's choice to prosecute or not cannot be challenged in court.

[14] It was further submitted by learned counsel for the appellant that the action of the PP is *mala fide*, oppressive and an abuse of criminal proceeding when he decided to first prefer civil forfeiture proceedings and thereafter instituted the said 146 charges against the appellant because:

(i) 141 of which overlap with the subject matter in the forfeiture proceeding;

A (ii) there was express representation by Deputy Public Prosecutor ("DPP") that "Pendakwa Raya memutuskan tiada pendakwaan"; and

(iii) the appellant is not liable to any prosecution pursuant to s. 30(7) of the MACC Act 2009.

B **[15]** The appellant is also contending that there was affirmative representation by the PP that there would be no prosecution against the appellant under the Act and the appellant had relied on this assurance by giving his statements to MACC. This had given rise to a reasonable and legitimate expectation that there would be no charge preferred against the appellant. Thus, estoppel is applicable against the PP. Learned counsel cited
C s. 115 of the Evidence Act 1950 and several civil cases like *Arab Malaysian Finance Bhd v. Kah Motor Co Sdn Bhd* [2010] 1 LNS 359; [2010] 5 MLJ 10; *V Veeriah v. General Manager, Keretapi Tanah Melayu* [1972] 1 LNS 160; [1974] 1 MLJ 201 which deal with s. 115 of the Evidence Act 1950 to support his contention.

D **[16]** The learned DPP, in his submission before us, conceded that the court may exercise its power under the law to check or to act against abuse or unconstitutional exercise of prosecutorial power. However, in exercising this power, first, it must be shown to the court that there was an abuse of the
E prosecutorial power by the PP. In this case, the appellant did not adduce any such evidence.

[17] The learned DPP further submitted that the PP's decision to prefer the 146 charges under the Act against the appellant despite there were forfeiture proceedings taken against the property did not amount to *mala fide* on the part
F of the PP. The application for forfeiture of property under s. 56(1) of the Act does not prohibit the PP from exercising his prosecutorial power against an individual and the doctrine of estoppel does not apply in criminal proceedings.

Our Deliberation And Decision

G **[18]** After scrutinising the cause papers, and having heard the submission by both parties, we are of the considered view that cases such as *Long Samat & Ors v. PP* [1974] 1 LNS 80; [1974] 2 MLJ 152 (FC) and *Johnson Tan Han Seng v. PP & Other Appeals* [1977] 1 LNS 38; [1977] 2 MLJ 66 (FC) had established that the PP's exercise of prosecutorial discretion in respect of his
H decision to prosecute, or not to prosecute, or to discontinue prosecution, or his decision to amend a charge, or to prefer a charge for a less serious offence when there is evidence of a more serious offence, is not justifiable or subject to judicial oversight. These decisions were made in the context of the PP's powers under art. 145(3) of the Federal Constitution and s. 376(1) of the
I Criminal Procedure Code. Therefore, we are of the view, in the context of PP's power under art. 145(3) of the Federal Constitution and s. 376(1) of the

Criminal Procedure Code, Her Ladyship had not erred when Her Ladyship held that the Public Prosecutor's choice to prosecute or not to prosecute cannot be challenged in court. However, in exercising his prosecutorial discretion, the PP must act according to law and must exercise it in good faith. The exercise of the prosecutorial discretion may be subjected to judicial review in two situations: first, where the prosecutorial power is abused, ie, where it is exercised in bad faith for an extraneous purpose, and second, where its exercise contravenes constitutional protection and right. (See Singapore case; *Law Society of Singapore v. Tan Guat Neo Phyllis* [2008] 2 SLR 239).

[19] Close at home, we have the Privy Council case of *Teh Cheng Poh v. PP* [1978] 1 LNS 202; [1979] 1 MLJ 50, which alluded to the principle that the exercise of the prosecutorial discretion by the PP can be questioned when it had been exercised unlawfully or based on irrelevant consideration. Lord Diplock in giving the advice of the Privy Council had said:

> Under the common law system of administration of criminal justice a prosecuting authority has a discretion whether to institute proceedings at all and, if so, with what offence to charge the accused. Such a discretion is conferred upon the Attorney General of Malaysia by Article 145(3) of the Constitution, *viz:*
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> > The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim court, a native court or a court-martial.
>
> There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another. *All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given unbiased consideration by the prosecuting authority and that the decisions whether or not to prosecute in a particular offence should not be dictated by some irregular consideration.* (emphasis added)

[20] Reverting to this appeal, we are of the considered view, the exercise of the prosecutorial discretion by PP may be questioned and subjected to judicial oversight if it is shown that the prosecutorial power was exercised in bad faith for an extraneous purpose or where its exercise contravenes constitutional protection and right. Thus, the question before us is whether the appellant had shown bad faith on the part of the PP in instituting the 146 charges or it contravenes the appellant's constitutional protection and right.

[21] Going through the cause papers especially the affidavit affirmed by the appellant (encl. 10) in support of his application, we find there is nothing to support the appellant's allegation of bad faith or an abuse of court process on the part of the PP in instituting the 146 charges. On the issue of *mala fide* and abuse of the court process, the gist of his averment in his affidavit-in-support is that he was made to believe by the MACC officers that only forfeiture proceeding against the properties would be taken and no criminal charge would be instituted against him. Counsel for the appellant argued that a letter issued by MACC to the Lembaga Hasil Dalam Negeri and carbon copied to the appellant's counsel which stated that in the event they are successful in the forfeiture proceeding, the MACC is agreeable for the proceeds of the forfeited property be used to settle the tax assessed against the appellant, had misled the appellant into believing that the MACC will make good on their promises not to prosecute. This according to the appellant amounted to *mala fide* on the part of PP. This *mala fide*, according to appellant, was further demonstrated by the fact that the said 146 charges were filed in court on the same day the High Court delivered its decision ordering the forfeiture of the properties.

[22] In our considered view, these allegations fall short of establishing abuse of the prosecutorial power or bad faith on the part of the PP. It is incumbent on the appellant to adduce the evidence of an abuse of the prosecutorial power or bad faith on the part of the PP, but the appellant had failed to do so in this case.

[23] The fact that there were forfeiture proceedings initiated against the properties before the 146 charges against the appellant were filed, by itself, would not, in our considered view, amount to bad faith on the part of the PP. The forfeiture proceedings were made under s. 56 of the Act against properties, and the PP has to make the application within 12 months from the date of seizure, whereas all the 146 charges against the appellant were under s. 4(1) of the Act which was a prosecution against individual and not against the property.

[24] An application of forfeiture of property under the Act is a standalone action. (See CA decision in *Azmi Osman v. PP & Another Appeal* [2015] 9 CLJ 845). Neither the Act nor the MACC Act 2009 prohibits an action of forfeiture of property be taken before any charge is made under s. 4(1) of the Act or any offence under the MACC Act 2009 for that matter. The application of s. 56(1) of the Act does not prohibit the PP from exercising its prosecutorial power against an individual.

[25] For the above-said reason we are of the view there is no evidence to support the appellant's allegation that the PP was motivated by bad faith in deciding to institute the 146 charges against the appellant. Hence the learned High Court Judge is right in refusing to have the 146 charges against the appellant be quash/set aside. When there is no evidence that the filing of the

146 charges was made in bad faith for an extraneous purpose, the PP's decision to initiate the 146 charges is not justifiable or subject to judicial oversight.

[26] Regarding the issue of the representation by the DPP, the appellant contended that DPP Mohd Fares bin Rahmah had filed affidavit in forfeiture proceeding against land and cash, where he stated that "setelah kertas siasatan ini diteliti Pendakwa Raya memutuskan tiada pendakwaan terhadap respondent di atas mana-mana kesalahan di bawah akta AMLATFPUAA 2011/Akta SPRM 2009". This, according to the appellant, had given rise to reasonable and legitimate expectation that there would be no charge preferred against him which in turn had induced him to reveal information in his affidavit opposing the forfeiture proceedings taken against him. Thus, according to learned counsel for the appellant, by virtue of s. 115 of the Evidence Act 1950, PP is estopped from filing the 146 charges. Further, he is entitled to protection under s. 30(7) of the MACC Act 2009.

[27] Learned counsel referred to s. 115 of the Evidence Act 1950 and *Arab Malaysian Finance Bhd v. Kah Motor Co Sdn Bhd* [2010] 1 LNS 359; [2010] 5 MLJ 10 to support his contention that PP is estopped from initiating the 146 charges against the appellant. In the said Court of Appeal case, His Lordship Abdul Malik Ishak JCA relied on the *dicta* by Mohamed Azmi J (later SCJ) in *V Veeriah v. General Manager, Keretapi Tanah Melayu* [1972] 1 LNS 160; [1974] 1 MLJ 201 regarding the scope of estoppel under s. 115 of the Evidence Act 1950 as follows:

> [50] Mohamed Azmi J (later SCJ) in *V Veeriah v. General Manager, Keretapi Tanah Melayu* [1974] 1 MLJ 201 at p 202, in the course of His Lordship's judgment had this to say in regard to the scope of estoppel in s. 115 of the Evidence Act 1950:
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> > *Sarkar on Evidence* (12th Ed) at p 1033 states that there are seven prerequisites to bring a case within the scope of estoppel as defined in s. 115. It was contended by the defence that all these prerequisites had been fulfilled, namely:
> >
> > (1) There must be a representation by a person or his authorized agent to another in any form – a declaration, act or omission.
> >
> > (2) The representation must have been of the existence of a fact and not of promises *de futuro* or intention which might or might not be enforceable in contract.
> >
> > (3) The representation must have meant to be relied upon, i.e. it must have been made under the circumstances which amounted to an intention causing or permitting belief in another. The proof of the intent might be direct or circumstantial, e.g. by conduct.

(4) There must have been belief on the part of the other party in its truth.

(5) There must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it and to alter his former position to his prejudice or detriment.

(6) The misrepresentation or conduct or negligence must have been the proximate cause of leading the other party to act to his prejudice.

(7) The person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of things or had means of knowledge, there can be no estoppel.

[28] Relying on the above case, learned counsel for the appellant contended that the appellant had fulfilled all the seven pre-requisites to bring his case within the scope of estoppel as provided for in s. 115 of the Evidence Act 1950 and as such the PP is estopped from initiating the 146 charges after the appellant had affirmed affidavit to oppose the forfeiture proceedings against him.

[29] In response, the learned DPP, without elaborating further or citing any case law submitted, that the doctrine of estoppel is not applicable in the criminal proceedings but the principle of legitimate expectation does. Be that as it may, we are of the considered view that the issue of estoppel based on the ground of *res judicata* applies in criminal as well as civil proceedings. However, from the factual matrix of this case, we are constrained to agree with the learned High Court Judge when Her Ladyship found:

[17] However the principle of *res judicata* cannot be applied against the Public Prosecutor since the forfeiture of properties and prosecution of the accused were 2 separate actions/proceedings and not a repetition of process.

[18] Moreover, the forfeiture proceedings were conducted at the High Court (civil) and the prosecution of the accused were made at the Sessions Court (criminal). Therefore, the application between the respective Courts differed in their mode of litigations and in their standard burden of proof.

[19] Thus, the principle of *res judicata*/abuse of court process cannot be applied against the Public Prosecutor based on the above justifications.

[30] Regarding the issue of legitimate expectation, the main argument by the appellant is that as the result of DPP Mohd Fares bin Rahmah's statement "setelah kertas siasatan ini diteliti Pendakwa Raya memutuskan tiada pendakwaan terhadap respondent di atas mana-mana kesalahan di bawah akta

AMLATFPUAA 2011/Akta SPRM 2009" the appellant had affirmed his affidavit opposing the forfeiture proceedings. This gives rise to a legitimate expectation that there would be no criminal charge preferred against him.

[31] On this issue of "legitimate expectation" it is pertinent to quote the Court of Appeal case *Government Of The State Of Sabah v. Suwiri Sdn Bhd* [2005] 4 CLJ 727; [2006] 1 MLJ 359 which touched on "legitimate expectation":

> [19] The learned JC cited correctly the following cases to explain the concept of legitimate expectation:
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> > In *R v. Secretary of State for the Home Department; ex parte Khan* [1985] I All ER 40 at p 47:
> >
> > > 'Legitimate expectations' in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis.
>
> see AG of *Hong Kong v. Ng Yuen Shiu* [1983] 2 All ER 346 at p 350; [1983] 2 AC 629 at p 636:
>
> > The expectations may be based on some statement or undertaking by, or on behalf of the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.
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> And in *R v. Devon County Council; ex parte Baker & Anor, R v. Durham County Council; ex parte Curtis & Anor* [1995] 1 All ER 73 at pp 88-89;
>
> > It is first, I think convenient to identify, at least in broad categories, various of the distinct sense in which the phrase legitimate expectation' is nowadays used.
>
> (1) ... These various authorities show that the claimant's right will only be found established when there is a clear and unambiguous representation upon which it was reasonable for him to rely. Then the administrator or other public body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine employed in this sense is akin to an estoppel ...
>
> (2) Perhaps more conventionally the concept of legitimate expectation is used to refer to the claimant's interest in some ultimate benefit which he hopes to retain (or some would argue, attain). Here, therefore, it is the interest itself rather than the benefit that is the substance of the expectation. *In other words, the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness;* the law recognizes that

A the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision ...

(3) *Frequently, however, the concept of legitimate expectation is used to refer to the fair procedure itself. In other words it is contended that the claimant has a legitimate*
B *expectation that the public body will act fairly towards him ...*

(4) The final category of legitimate expectation encompasses those cases in which it is held that a particular procedure, not otherwise required by law in the protection of an interest, must be followed consequent upon some specific promise or practice. Fairness requires that the public authority be held to it. The authority is bound by its assurance, whether
C expressly given by way of a promise or implied by way of established practice.

(see also *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggunga*n [1999] 3 MLJ 1).

(emphasis added)

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[32] Following the above case, we are of the view that the appellant does have a legitimate expectation but it is confined to legitimate expectation to have a right to procedural fairness. In other words, the appellant has a legitimate expectation that the PP will act fairly towards him procedurally. In this case, after going through the cause papers we find there is no
E suggestion, let alone evidence, to show that the PP had not followed the correct procedure in framing the 146 charges against the appellant. Hence, we find this issue of "legitimate expectation" raised by the appellant to be devoid of merit.

F **[33]** Finally, learned counsel for the appellant tried to rely on repealed s. 30(7) of the MACC Act 2009 to have the 146 charges quashed. It was submitted by learned counsel for the appellant that s. 30(7) was only repealed on the 27 April 2018 *via* Malaysian Anti-Corruption Commission (Amendment) Act 2018 (Act A1567) which was after the appellant had given his statement to the MACC officers. Hence, it is applicable to the appellant.

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[34] For ease of reference, we reproduce the repealed s. 30(7) here and it reads:

(7) Where any person discloses any information or produces any book, document record, account or computerised data or article pursuant to
H subsection to subsections (1), (3) and (5), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or employee the first mentioned person may be acting, **shall, on account of such disclosure or production,** be liable to any prosecution, except a prosecution for an offence under section 27, for any offence under or by virtue of any written law, or to any proceeding or claim by
I any person under or by virtue of any law or under or by virtue of any contract, agreement or arrangement, or otherwise. (emphasis added)

[35] After going through the repealed s. 30(7), it is clear to us that s. 30(7) merely provides no prosecution (except for giving false or inconsistent statement) shall be brought on account of disclosing information to the investigating officer. It does not in any way give immunity to the person disclosing the information from prosecution for any offences he may have committed. Hence, we find this issue brought up by the appellant is also without merit.

Conclusion

[36] In conclusion, we find that no evidence to support the appellant's allegation that the PP was motivated by bad faith in deciding to institute the 146 charges against the appellant. When there is no evidence that the filing of the 146 charges was made in bad faith for an extraneous purpose, the PP's decision to initiate the 146 charges is not justifiable or subject to judicial oversight. We also find that there is no breach of *res judicata* principle when the PP decides to bring the 146 charges against the appellant after having initiated the forfeiture proceedings against the properties. We also find the legitimate expectation by the appellant to get procedural fairness had been met when there is no evidence to suggest that the PP had not followed the correct procedure in framing the 146 charges against the appellant.

[37] For the above-said reasons, we find the appeal is devoid of merit and accordingly we dismissed the appeal. The decision of the learned High Court Judge is affirmed.